

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-23 are pending in the application, with 1, 3, 5, 8, 14, 16, 18 and 20 being the independent claims. New claims 20-23 are sought to be added. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Personal Interview with Examiner and Examiner's Supervisor

A personal interview was held on Wednesday, February 23, 2005, between Examiner Michael J. Yigdall, Examiner's Supervisor Tuan Q. Dam, and Applicants' representatives Michael V. Messinger (Registration No. 37,575) and Brian Lee. Applicants would like to thank the Examiner and the Examiner's Supervisor for a helpful and constructive interview.

During the interview, the pending claims and proposed amendments, which were faxed to the Examiner on February 18, 2005 along with the Interview Request Form (PTOL-413A), were discussed to clarify the features of the Applicants' invention. No agreements were reached. Arguments made by Applicants' representatives are incorporated and expanded upon herein. Applicants appreciate suggestions made by the

Examiner. These suggestions were considered and incorporated in the newly presented claims and throughout the following remarks.

Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 1-8, 10, 11 and 16-19 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,578,197 to Peercy *et al.* ("Peercy") in view of U.S. Patent 6,502,238 to Pavan *et al.* ("Pavan"). (See Office Action, page 7). Applicants respectfully traverse.

Applicants maintain that significant technical differences exist between the claimed invention and the applied references. Neither Peercy nor Pavan, taken alone or in combination, suggest or teach the claimed invention.

Peercy relates to *translating* procedural shading language instructions from one graphics API (such as Renderman) to another graphics API (such as OpenGL or Direct3D). (See Peercy, Abstract). Pavan relates to *translating* a user program to create program fragments whereby each program fragment can be loaded on one of several computers on a network to produce a distributed application. (See Pavan, Abstract, FIG. 7A and 7B). Both Peercy and Pavan are related to translation technologies or *compile-time* technologies.

Applicants respectfully maintain that this rejection based on a combination of Peercy and Pavan is improper. The Examiner has stated a belief that a suggestion or motivation to combine the references has been provided by stating that the combination "would favorably (a) enable low-level operations to be encapsulated and thus hidden ... (b) enable the application to be automatically targeted for a distributed environment ...

and (c) simply the programming." (See Office Action, page 2-3). The Examiner, however, has merely made a conclusion about what may be produced through a combination of Peercy and Pavan. The Examiner has not provided a showing of a suggestion or motivation for a person having ordinary skill in the art to combine these two references at the time of the Applicants' invention.

Applicants quote below a discussion regarding motivation to combine in *In re Dembiczak*, 175 F.3d 994, 999; 50 U.S.P.Q.2D (BNA) 1614 (Fed. Cir. 1999) to highlight the need for showing a suggestion or a motivation to combine:

Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed.Cir.1998) (describing "teaching or suggestion or motivation [to combine]" as an "essential evidentiary component of an obviousness holding");

In re Rouffet, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed.Cir.1998) ("the Board must identify specifically ... the reasons one of ordinary skill in the art would have been motivated to select the references and combine them");

In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed.Cir.1992) (examiner can satisfy burden of obviousness in light of combination "only by showing some objective teaching [leading to the combination]");

In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed.Cir.1988) (evidence of teaching or suggestion "essential" to avoid hindsight);

Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 297, 227 USPQ 657, 667 (Fed.Cir.1985) (district court's conclusion of obviousness was error when it "did not elucidate any factual teachings, suggestions or incentives from this prior art that showed the propriety of combination").

See also *Graham*, 383 U.S. at 18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 USPQ at 467 ("strict observance" of factual predicates to obviousness conclusion required).

Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight. See, e.g., *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed.Cir.1985) ("The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.").

Furthermore, assuming arguendo that the combination is proper, Applicants maintain that Peercy and Pavan do not teach each and every element of the claimed invention.

For example, Peercy and Pavan, alone or in combination, do not teach that "the application graph can be traversed by a graphical application platform at run time to execute appropriate processing blocks on a run time platform" as recited in claim 1. As discussed above, Peercy and Pavan are directed toward *compile-time* related technologies rather than *run-time* related technologies.

In another example, Peercy and Pavan, alone or in combination, do not teach an application graph. Applicants respectfully disagree with Examiner's characterization that "the tree disclosed by Peercy ... is an application graph *per se*." (See Office Action, page 4). Peercy and Pavan, alone or in combination, do not teach "an application graph that expresses the identity of the stored processing blocks and data connectivity between the stored processing blocks" as recited in claim 1. Furthermore, Peercy and Pavan are directed toward *compile-time* related technologies and do not teach a tree that "can be traversed by a graphical application platform at run time to execute appropriate processing blocks on a run time platform" as recited in claim 1. The trees described in Peercy and Pavan are utilized during *compile-time* translations. (See Peercy, col. 7, lines 35-45, col. 8, lines 41-47, See Pavan col. 4, lines 19-27, col. 7, lines 17-25).

Therefore, for at least the reasons stated above, claim 1 is patentable. Applicants maintain all arguments stated in the previous response to additionally support that claim 1 is patentable. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1.

Independent claims 3, 16 and 18 are further patentable over Peercy and Pavan, alone or in combination, for at least the reasons stated above, and in addition to their own respective elements, limitations, and/or features recited therein. Applicants maintain all arguments stated in the previous response to additionally support that claims 3, 16 and 18 are patentable. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 3, 16 and 18, and allowance thereof.

Independent claims 5 and 8 are further patentable over Peercy and Pavan, alone or in combination, for similar reasons as those stated above, and in addition to their own respective elements, limitations, and/or features recited therein. Furthermore, Peercy and Pavan, alone or in combination, do not teach, for example, "wherein the application real time kernel modifies the connections between said blocks at run time" as recited in amended claims 5 and 8. Applicants maintain all arguments stated in the previous response to additionally support that claims 5 and 8 are patentable. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 5 and 8, and allowance thereof.

Dependent claims 2, 4, 6-7, 10, 11, 17 and 19 are further patentable over Peercy and Pavan, alone or in combination, for at least the reasons stated above, in addition to the elements, limitations, and/or features recited therein. Applicants maintain all arguments stated in the previous response to additionally support that claims 2, 4, 6-7, 10, 11, 17 and 19 are patentable. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 2, 4, 6-7, 10, 11, 17 and 19, and allowance thereof.

The Examiner has rejected dependent claim 9 under 35 U.S.C. 103(a) as being unpatentable over Peercy in view of Pavan and further in view of U.S. Patent 6,584,489 to Jones *et al.* ("Jones"). (See Office Action, page 8). Applicants respectfully traverse.

Claim 9 is patentable over Peercy and Pavan for at least the reasons stated above, in addition to the elements, limitations, and/or features recited therein. Jones does not overcome the above-noted deficiencies. Furthermore, the Examiner has not provided in the Office Action a suggestion or motivation to combine Peercy, Pavan and Jones but has merely made a conclusion about what may be provided through the combination of these references. Applicants maintain all arguments stated in the previous response to additionally support that claim 9 is patentable. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 9, and allowance thereof.

The Examiner has rejected dependent claim 12 under 35 U.S.C. 103(a) as being unpatentable over Peercy in view of Pavan and further in view of U.S. Patent 5,857,106 to Barbour *et al.* ("Barbour"). (See Office Action, page 8). Applicants respectfully traverse.

Claim 12 is patentable over Peercy and Pavan for at least the reasons stated above, in addition to the elements, limitations, and/or features recited therein. Barbour does not overcome the above-noted deficiencies. Furthermore, the Examiner has not provided in the Office Action a suggestion or motivation to combine Peercy, Pavan and Barbour but has merely made a conclusion about what may be provided through the combination of these references. Applicants maintain all arguments stated in the previous response to additionally support that claim 12 is patentable. Therefore,

Applicants respectfully request reconsideration and withdrawal of the rejection of claim 12, and allowance thereof.

The Examiner has rejected dependent claim 13 under 35 U.S.C. 103(a) as being unpatentable over Peercy in view of Pavan in view of Barbour and further in view of Jones. (See Office Action, page 8). Applicants respectfully traverse.

Claim 13 depends from claim 12 and therefore claim 13 is patentable over Peercy, Pavan and Barbour for at least the reasons stated above, in addition to the elements, limitations, and/or features recited therein. Jones does not overcome the above-noted deficiencies. Furthermore, the Examiner has not provided in the Office Action a suggestion or motivation to combine Peercy, Pavan, Barbour and Jones but has merely made a conclusion about what may be provided through the combination of these references. Applicants maintain all arguments stated in the previous response to additionally support that claim 13 is patentable. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 13, and allowance thereof.

The Examiner has rejected claims 14 and 15 under 35 U.S.C. 103(a) as being unpatentable over Peercy in view of Barbour. (See Office Action, page 9). Applicants respectfully traverse. First, the Examiner has not provided in the Office Action a suggestion or motivation to combine Peercy and Barbour but has merely made a conclusion about what may be provided through the combination of these references. Second, assuming arguendo that the combination is proper, Applicants maintain that Peercy and Barbour, alone or in combination, do not teach each and every element of the claimed invention.

For example, neither Peercy nor Barbour, alone or in combination, discloses "(b) mapping at least one block, corresponding to the selected implementation, to a phase of execution" as recited in claim 14. The Examiner in his previous Office Action has cited to Peercy, col 5, lines 35-45 as showing that Peercy teaches element (b) of claim 14. (See prior Office Action dated March 11, 2004, page 12). Applicants respectfully disagree with the Examiner's characterization. The cited portion of Peercy discloses a compilation system that translates "abstract expression into an intermediate representation, such as a tree representation." (See Peercy, col 5, lines 35-45). Peercy discloses a *compile-time* translation whereas element (b) of claim 14 discloses "mapping at least one block, corresponding to the selected implementation, to a phase of execution."

Therefore, for at least the reasons stated above, claims 14-15 are patentable. Applicants maintain all arguments stated in the previous response to additionally support that claims 14 and 15 are patentable. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 14 and 15, and allowance thereof.

The Examiner has not formally rejected claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over Applicants' own allegedly admitted prior art. The Examiner, however, makes a vague request for clarification. (See Office Action, page 6). In any event, Applicants respectfully traverse. The Examiner acknowledges in the Office Action that "the claims include features not expressly anticipated by the admitted prior art." (See Office Action, page 6). Applicants maintain that the Examiner, with these limited remarks, has not met his burden of setting forth a *prima facie* case to support a

rejection under 35 U.S.C. § 103(a) and therefore, any such rejection would be improper. To be complete, Applicants incorporate all arguments stated in the previous response to additionally support that claims 1-15 are patentable over any allegedly admitted prior art. Furthermore, for at least the reasons stated above, claims 1-15 are patentable over any allegedly admitted prior art. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-15, and allowance thereof.

New claims 20-23 are also patentable. New claims 20-23 have been added to further highlight distinctive features of the claimed invention as discussed with the Examiner and Examiner's supervisor during the personal interview of Wednesday, February 23, 2005.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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